

**United States Department of Labor
Employees' Compensation Appeals Board**

R.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bell City, LA, Employer**

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**Docket No. 17-1742
Issued: January 19, 2018**

Appearances:

Brett E. Blumstein, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 8, 2017 appellant, through counsel, filed a timely appeal from a May 26, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish disability for the period December 8, 2012 and continuing due to her accepted employment conditions.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 13, 2012 OWCP accepted that appellant, then a 58-year-old rural carrier, sustained a concussion, open head wound, and head contusion when her postal vehicle was struck from behind on April 24, 2012.

Appellant stopped work on the date of injury and never returned. She received continuation of pay from the date of injury through June 3, 2012. Appellant used personal leave beginning June 4 through December 7, 2012, and entered leave without pay status beginning December 8, 2012. On January 10, 2013 she claimed wage loss beginning December 8, 2012 and continuing.

Appellant underwent a right total knee replacement on September 18, 2012. A left carpal tunnel release, as well as a right carpal tunnel injection, was performed on May 23, 2013. On October 23, 2013 appellant underwent a left shoulder surgery. No preauthorization was sought from OWCP prior to any of the surgical procedures.

On February 6, 2013 OWCP developed the period of wage loss beginning December 8, 2012. By decision dated April 16, 2013, it denied entitlement to wage-loss compensation benefits for the period beginning December 8, 2012. OWCP found that the conditions identified as disabling were not related to the employment injury of April 24, 2012.

Appellant continued to file wage-loss compensation claims. By decision dated September 16, 2013, OWCP denied wage-loss compensation benefits for the period June 5 through July 19, 2013. It again found that wage loss was not related to the work accident or accepted conditions.

Appellant disagreed with the September 16, 2013 decision and counsel at the time requested a telephonic hearing, by letter dated September 27, 2013 before an OWCP hearing representative.

OWCP subsequently developed and denied additional claims for wage-loss compensation for periods July 20 through August 30, 2013 and August 31, 2013 and continuing by decisions dated October 30 and December 31, 2013.

On January 31, 2014 appellant requested a hearing regarding OWCP's December 31, 2013 decision. OWCP's Branch of Hearings and Review denied the request on March 5, 2014 based on her failure to timely invoke her appellate right.

Counsel at the time requested that the prior request for hearing be converted to a review of the written record by an OWCP hearing representative.

In a June 5, 2014 decision, OWCP's hearing representative affirmed OWCP's September 16, 2013 decision, which denied appellant's disability claim for the period June 5 through July 19, 2013.

Appellant submitted a January 10, 2014 report from Dr. Larry Dilks, an attending clinical psychiatrist, who indicated that due to depression, anxiety, post-traumatic stress syndrome, pain, and age, she was unemployable. In a report dated February 10, 2014, Dr. Lawrence Weber, an

orthopedic surgeon, indicated that her surgical history related to the April 24, 2012 employment accident included knee replacement, shoulder scope, and bilateral carpal tunnel release. He found that she was unable to perform the duties of her regular job.

In a January 1, 2014 report, Dr. Paul Fenn, Board-certified in orthopedic surgery, advised that appellant was unable to perform the duties of a rural mail carrier. He noted a surgical history “related to the accident.” In a February 25, 2014 report, Dr. Nathan Cohen, Board-certified in orthopedic surgery, noted that appellant’s “original job as a rural mail carrier presents issues, given the relatively arduous nature of her employment. It appears from letters written by Dr. Weber and Dr. Fenn, based on extenuating circumstances involving other comorbidities, she would be unable to perform the workload required of her.”

By July 2, 2015 decision, OWCP denied modification of the June 5, 2014 decision finding that appellant failed to meet her burden of proof to establish disability for the period June 5 through July 19, 2013 due to her accepted employment conditions.

Appellant submitted an April 6, 2016 report in which Dr. Cohen indicated that her work-related conditions necessitated her undergoing right total knee replacement surgery.

In an August 22, 2016 decision, OWCP denied modification of the July 2, 2015 decision finding that appellant failed to meet her burden of proof to establish disability for the period December 8, 2012 and continuing due to her accepted employment conditions. This decision lengthened the period of disability being denied, beyond July 19, 2013.

Appellant submitted a December 19, 2016 report in which Dr. John Ellis, an attending Board-certified family practitioner, requested an expansion of her accepted conditions. Dr. Ellis provided an opinion that she was unable to work due to the accepted conditions.

By May 26, 2017 decision, OWCP denied modification of the August 22, 2016 decision finding that appellant failed to meet her burden of proof to establish disability for the period December 8, 2012 and continuing due to her accepted employment conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.⁴ This meaning, for brevity, is expressed as disability for work.⁵

³ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁴ *See* 20 C.F.R. § 10.5(f).

⁵ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the period December 8, 2012 and continuing due to her accepted employment conditions, *i.e.*, a concussion, open head wound, and head contusion which were sustained when her postal vehicle was struck from behind on April 24, 2012.

Appellant submitted a January 10, 2014 report from Dr. Dilks, an attending clinical psychiatrist, who indicated that due to depression, anxiety, post-traumatic stress syndrome, pain, and age, she was unemployable. In a report dated February 10, 2014, Dr. Weber indicated that her surgical history related to the April 2012 accident included knee replacement, shoulder scope, and bilateral carpal tunnel release. He found that appellant was unable to perform the duties of her regular job.

In a January 1, 2014 report, Dr. Fenn advised that appellant was unable to perform the duties of a rural mail carrier. He noted a surgical history “related to the accident.” In a February 25, 2014 report, Dr. Cohen noted that appellant’s “original job as a rural mail carrier presents issues, given the relatively arduous nature of [appellant’s] employment. It appears from letters written by Dr. Weber and Dr. Fenn, based on extenuating circumstances involving other comorbidities, she would be unable to perform the workload required of her.”⁷ Appellant also submitted a December 19, 2016 report in which Dr. Ellis requested an expansion of her accepted conditions. Dr. Ellis provided an opinion that she was unable to work due to the accepted conditions.

The Board finds that these reports are of limited probative value on the relevant issue of this case. None of the physicians provided a complete and accurate history with objective findings and a rationalized opinion in support of appellant being totally disabled from work on or after December 8, 2012 due to her accepted work-related conditions beginning December 8, 2012. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.⁸ A number of these physicians related appellant’s disability to conditions which have not been accepted as work related.

⁶ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁷ Appellant also submitted an April 6, 2016 report in which Dr. Cohen indicated that her work-related conditions necessitated her undergoing right total knee replacement surgery.

⁸ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability for the period December 8, 2012 and continuing due to her accepted employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board